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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a General meeting on March 8, 2006, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

David Wilson, President of the Board, called the General meeting to order at 9:24 a.m.

Present:	Robert V. Branzuela	William G. Brennan, Executive Director
	Robert T. (Tom) Flesh	Howard Weinberg, General Counsel
	David C. Lizàrraga	Robin Parker, Senior Staff Counsel
	Alan J. Skobin	
	David W. Wilson	

Absent: Haig Papaian
Andy Robles
Sushil K. Sharma
Glenn E. Stevens

Mr. Brennan noted a quorum for the regular meeting. He also noted that there is not a quorum for consideration of Agenda item #7. He suggested, and it was agreed upon by the Board, that a special meeting would be scheduled on April 4, 2006, after the Industry Roundtable, to consider item #7.

3. **APPROVAL OF THE MINUTES FROM THE JANUARY 26, 2006, GENERAL MEETING**

Mr. Skobin moved to adopt the January 26, 2006, General Board meeting minutes. Mr. Branzuela seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION OF JOAN BORUCKI, FORMER DMV DIRECTOR**

At the November 16, 2005, General meeting, the members unanimously moved to present Joan Borucki with a resolution for her contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of the State of California. Mr. Wilson presented the Resolution to Ms. Borucki on behalf of the members and staff.

5. **PRESENTATION OF RESOLUTION TO TOM NOVI, RETIRED EXECUTIVE DIRECTOR**

At the November 16, 2005, General meeting, the members unanimously moved to present Tom Novi with a resolution for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and for his 30+ years of service to the people of the State of California. Mr. Wilson presented the Resolution to Mr. Novi on behalf of the members and staff.

6. **BOARD MEMBER EDUCATION CONCERNING THE CAR BUYER'S BILL OF RIGHTS BY BRIAN MAAS, GOVERNMENT AND LEGAL AFFAIRS COUNSEL, CALIFORNIA MOTOR CAR DEALERS ASSOCIATION – BOARD DEVELOPMENT COMMITTEE**

Brian Maas, Government and Legal Affairs Counsel for the California Motor Car Dealers Association, provided an informative overview of the Car Buyer's Bill of Rights [Assembly Bill 68 (Montanez), Chapter 128 of 2005]. This bill becomes operative on July 1, 2006. Mr. Maas also provided a written summary of the bill and was available to answer member questions. The legislation was summarized, in part, as follows:

- **Vehicle Financing.** AB 68 limits the amount of profit that dealers can retain when they sell conditional sales contracts to 2.5% for contracts up to 60 months, and 2% for deals exceeding that length.
- **2-Day Contract Cancellation Option.** This bill creates a contract cancellation option for certain used cars. This provision, which applies to all vehicles priced at less than \$40,000, will provide consumers with the ability to purchase the right to return a car for any reason within 48 hours after buying the vehicle. This benefit also provides dealers with the flexibility to offer such return policies at no charge or up to varying statutory maximums, depending on the price of the vehicle sold. So-called "joy riders" will be discouraged from buying this option due to the 250-mile limitation, a requirement that the vehicle be returned in the same condition, and dealers' authorization to charge a restocking fee up to \$175 for vehicles of \$5,000 or less, \$350 for vehicles less than \$10,000, and \$500 for vehicles above that amount.
- **Certified Used Cars.** AB 68 strikes a balance between setting minimum standards for which vehicles cannot be certified, and dictating the precise terms of dealer certification programs. The bill prohibits dealers from advertising vehicles as "certified" that, among other things, they knew or should have known were odometer rollbacks or Lemon Law buybacks, are sold "as is," have any frame damage or have sustained damage in an impact, fire, or flood, that after repair prior to sale substantially impairs the use or safety of the vehicle. In addition, the bill makes it clear that a dealer must provide a consumer with an inspection report in order to certify a vehicle.
- **Payment Packing.** The bill specifically defines the practice of "payment packing," which should aid prosecution of this type of fraud. In addition, AB 68 helps to alleviate any confusion by specifically defining the items to be disclosed on the contract. The bill also requires dealers to provide consumers with a document comparing the "Installment Payment INCLUDING Listed Items" (service contracts, insurance products, debt cancellation

agreements, theft deterrent devices, surface protection products or any vehicle contract cancellation option) and the “Installment Payment EXCLUDING Listed Items.” This will allow consumers to make a side-by-side comparison of the proposed monthly payment with and without such additional items.

- Credit Score Disclosure. AB 68 requires dealers to provide a statutorily mandated disclosure of a credit score if obtained by the dealer from a recognized credit reporting agency. The statutorily defined disclosure, which is similar to the one required in real estate transactions, is straightforward and provides the necessary context to aid the prospective buyer in understanding what a credit score means for his or her ability to obtain credit.

Mr. Maas indicated that recreational vehicles are excluded from the contract cancellation provisions, while motorcycles are excluded from all of the provisions of AB 68, except the “no cooling-off period” sign modifications and the written disclosure requirements for Installment Payments INCLUDING and EXCLUDING listed items.

Mr. Skobin encouraged Mr. Maas to provide available resources, such as the CMCD A Dealer Management Guide, for Board staff education. Mr. Flesh asked if there was a sunset provision and Mr. Maas informed him that there is no sunset clause. He mentioned that there is a provision that a vehicle can only be returned once in a 30-day period to the same dealer.

7. **CONSIDERATION OF DECISION IN LIGHT OF JUDGMENT GRANTING KIA MOTORS AMERICA, INC.’s PETITION FOR WRIT OF ADMINISTRATIVE MANDATE OR OTHER APPROPRIATE RELIEF.**

S & C MOTORS, INC., dba S & C KIA v KIA MOTORS AMERICA, INC.
Protest No. PR-1894-04

Consideration of the Decision in light of the Sacramento County Superior Court’s Judgment Granting Kia Motors America, Inc.’s Petition for Writ of Administrative Mandate or Other Appropriate Relief, wherein the Board was ordered to set aside its January 26, 2005 Decision sustaining the protest and dismiss the above entitled protest, by the Public members of the Board.

Given the lack of a Public member quorum, this matter was postponed until the April 2006, Special meeting.

8. **ANNUAL REVIEW OF THE BOARD’S MISSION AND VISION STATEMENTS – EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the annual review of the Board’s Mission and Vision Statements. Mr. Brennan indicated that the Board has been working under these goals for the last several years and they have functioned very well, however if the Board wishes to make additions or changes it is appropriate to do so at this time. There were no changes or additions suggested by members of the Board.

9. **ANNUAL UPDATE ON STAFF TRAINING PROGRAMS IMPLEMENTED FOR SUPPORT PERSONNEL, STAFF COUNSEL, AND ADMINISTRATIVE LAW JUDGES – ADMINISTRATION COMMITTEE.**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel. Ms. Kindel stated that this is the annual update on the training programs that have been attended by all of the staff. Ms. Kindel reported on an Identify Theft Seminar she attended, and indicated that the memorandum provided to the Board staff would also be sent to the members.

10. **STATUS REPORT ON THE PORTION OF THE CONSUMER MEDIATION SERVICES WEBSITE THAT WAS TRANSLATED IN SPANISH – ADMINISTRATION COMMITTEE.**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the portion of the Consumer Mediation Services website that has been translated into Spanish. Ms. Kindel indicated that number of hits to the Spanish version of the Consumer Mediation Pamphlet is being tracked and there have been 269 hits for the four months that it has been up on the website. Mr. Brennan said the referral to the Spanish interpretation on the website is at eye level and clearly marked for easy access.

11. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT – BOARD DEVELOPMENT COMMITTEE.**

The members were provided with a memorandum from Howard Weinberg pointing out the changes that have occurred to the Administrative Procedure Act, Bagley-Keene Open Meeting act, Political Reform Act and Public Records Act. Mr. Weinberg said regarding the Public Records Act, there is a case before the Supreme Court of California as to whether or not agencies need to disclose the names and salaries of certain employees. This is still under review.

12. **DISCUSSION AND CONSIDERATION OF MODIFYING THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD – BOARD DEVELOPMENT COMMITTEE.**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning modifying the Solon C. Soteras Employee Recognition Award. Mr. Weinberg said this is a formality where the Board can consider and adopt making this award on an as-needed basis or as-merited basis. Mr. Flesh moved to give the award on an as-needed basis. Mr. Wilson asked Mr. Flesh to amend his motion to read as merited, but no less than once a year. Mr. Flesh amended his motion. Mr. Lizàrraga seconded the motion. The motion carried unanimously.

13. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 2ND QUARTER OF FISCAL YEAR 2005-2006 AND STATUS OF RESERVE BALANCE – FISCAL COMMITTEE.**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel and Linda Lighter concerning the Board's financial condition for the second quarter and the status of the reserve balance. Ms. Kindel indicated that the Board expended 45% of its appropriated budget through the

2nd quarter of fiscal year 2005-06, which is within the Board's budget allocation. Additional information was provided on the reserve balance tracking of and getting to the goal for a one-year surplus. The memorandum indicated that the Board should reach its goal of a reserve balance equal to a one-year appropriation in fiscal year 2009-10. Staff will continue to closely monitor the reserve balance, and provide a report annually in March. Mr. Flesh said he is concerned that the Board is building up reserves when it should be depleting reserves and he asked if the Board should be looking at reducing the fee further. Mr. Skobin suggested that the Board continue consumer and industry education and not reduce fees at this time. Mr. Brennan said it is too early for staff to provide real direction as to how it proposes to reduce fees in the future. The objective is to reduce fees and he will keep the Board updated on this issue.

14. **CONSIDERATION OF THE REVISED NEW MOTER VEHICLE BOARD ADMINISTRATIVE LAW JUDGES BENCHBOOK – POLICY AND PROCEDURE COMMITTEE.**

The members were provided with a revised version of the *New Motor Vehicle Board Administrative Law Judges Benchbook*. Mr. Weinberg said at Mr. Skobin's suggestion, he set forth all of the changes in a cover memo and highlighted them in the text for easy review. Mr. Skobin asked for an explanation of the deletion of the admonishment of out-of-court review in place of the cautionary note. Mr. Weinberg said this is a way to soften the rather bold statement of saying "never conduct an out-of-court review" because there may be instances when the Judge wants an opportunity to do an on-site inspection. Mr. Lizàrraga moved to approve the revised *New Motor Vehicle Board Administrative Law Judge's Benchbook*. Mr. Branzuela seconded the motion. The motion carried unanimously.

15. **STATUS CONCERNING ADOPTED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES – POLICY AND PROCEDURE COMMITTEE.**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the status of the adopted revisions to the assignment of cases to Board Administrative Law Judges. Ms. Parker indicated that this process is working well and without any problems.

16. **DISCUSSION CONCERNING PENDING LESGISLATION – POLICY AND PROCEDURE COMMITTEE.**

- a. Pending Legislation that impacts the Board.
- b. Pending Legislation of general interest.
 - (1) Assembly Bill 1561 (Assembly Member Umberg)
 - (2) Assembly Bill 1854 (Assembly Member Oropeza)

The members were provided with a memorandum updating them on legislation. Ms. Parker said there are no bills that directly impact the Board. There is legislation of general interest that staff will track and report back to the Board findings at future meetings.

17. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- g. Other.

Mr. Brennan stated that staff has successfully identified a potential new Administrative Law Judge to help with the calendar. She will be introduced to the Board for review and interview at its June meeting.

Mr. Brennan reported on the status of the upcoming industry Roundtable. The members were provided with a proposed schedule for the Roundtable. Four relevant topics to the industry have been identified. The first will have representatives from the California Fuel Cell Partnership in West Sacramento having a panel discussion. A second topic will be licensing as a manufacturer, or distributor, or dealer in the State of California. The third panel discussion will be on the need for employees in the auto industry, and how those needs can be fulfilled through aggressive recruiting efforts in the industry. The fourth topic will be an update concerning dealer and manufacturer regulatory issues.

Mr. Skobin commented on the fact that the Board owed a great deal of gratitude to Mr. Flesh for championing this program. He also mentioned that in the evening, after the Industry Roundtable, the California Motor Car Dealer's Association will be having a charity function and he asked that the Board and appropriate staff be provided information on this function in order to help promote the event.

Ms. Parker provided a status report on protests and petitions, and informed the Board that one new protest has been received, a Hyundai Motors establishment protest that was received on February 27, 2006. She said three protests have been dismissed, many matters are going to settlement conference, and many are scheduled for hearings. Mr. Wilson asked which protests have been dismissed. Ms. Parker stated the three that have been dismissed are *PB&J Automotive, d/b/a Tustin Mazda, Heritage Lincoln Mercury Mazda, and Miller Mitsubishi*.

Mr. Weinberg said that the judicial case load is narrowing. *Soutar's Nissan* has been dismissed. The briefing date for *S & C Kia* has been moved to May 5, 2006. There has been no activity on the two *Fladeboe* cases. Regarding the *Camarilla* case, the court awarded the prevailing party (Jeffrey Willis) \$343 for appeal costs and the Board is processing that payment.

18. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE BOARD PRESIDENT.**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning Committee assignments. Mr. Wilson went off the record to appoint members to the various committees. Mr. Wilson went back on the record and announced the following appointments:

The Executive Committee

Chair: David Wilson

Member: Alan Skobin

The Administration Committee

Chair: Robert Branzuela

Member: David Lizárraga

The Board Development Committee

Chair: Haig Papaian

Member: Sushil Sharma

The Fiscal Committee

Chair: David Lizárraga

Member: Andy Robles

The Government and Industry Affairs Committee

Chair: Tom Flesh

Member: Vacant until after the Industry Roundtable

The Policy and Procedure Committee

Chair: Alan Skobin

Member: Tom Flesh

Mr. Wilson designated Glenn Stevens to act in case management matters where Mr. Skobin or he are excluded from participation because they are Dealer members.

Mr. Brennan introduced to the Board Wayne Kaweski who is a new employee and will be acting as clerical staff and handling the mediation for the Consumer Mediation Program. The Board welcomed Mr. Kaweski.

Mr. Flesh said he wanted to personally congratulate Mr. Wilson on being unanimously voted in as President for a second term.

Mr. Skobin mentioned that some of the Board members would like to revisit the June meeting location. There is a conflict with travel to San Francisco for several members and it has been suggested that the meeting be held in Orange County. Mr. Brennan requested to move the date of

the meeting as well, in order that Ms. Parker can attend. After some discussion it was decided that the meeting would be on Friday, June 16, 2006, in Orange County.

19. **ADJOURNMENT**

Mr. Flesh moved to adjourn the meeting. Mr. Branzuela seconded the motion. The motion carried unanimously with Mr. Lizárraga not voting due to his brief absence. With no further business to discuss, the meeting was adjourned at 11:16 a.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____
David W. Wilson
President
New Motor Vehicle Board